

51468



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of: : PATENT
Hartmut SCHÜRG et al. :
Serial No.: 10/587,218 : Art Unit: 3636
Filed: July 25, 2006 : Examiner: E. P. Garrett
For: AIRCRAFT PASSENGER SEAT : Appeal No. _____

BRIEF ON APPEAL

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APPENDIX A – COPY OF CLAIMS ON APPEAL

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**APPELLANT'S BRIEF
ON APPEAL UNDER 37 C.F.R. § 41.37**

COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

For the appeal to the Board of Patent Appeals and Interferences from the decisions dated March 17, 2010 and June 7, 2010 of the Primary Examiner twice and finally rejecting claims 9-41 in connection with the above-identified application, Applicants-Appellants submit the following brief in accordance with 37 C.F.R. §41.37.

1. Real Party in Interest

The inventors, Hartmut Schürg, Oliver Forgatsch and Christian Pilgrim, assigned their entire rights, titles and interests in the patent application to Recaro Aircraft Seating GmbH & Co. KG of Schwäbisch Hall, Germany.

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2. Related Appeals and Interferences

There are no other related appeals or interferences known to Appellants, Appellants' legal representative, or assignee, which may directly affect or be directly affected by or have a bearing on the Board's decision in the pending Appeal.

3. Status of Claims

Claims 1-8 are cancelled. Claims 9-41 are pending, are rejected, and are on appeal.

4. Status of Amendments

Subsequent to the March 17, 2010 final Office Action containing the final rejection, no Amendment modifying the claims was filed.

5. Summary of Claimed Subject Matter

Independent claim 9 covers an aircraft passenger seat comprising a seat part 2, a backrest 1 extending from the seat part 2, a tray table 3 and a pocket receptacle 15 (Figs. 1-3; p. 4, line 12 – p. 5, line 10). The backrest 1 has a front surface 1a facing the seat part 2, a support structure 11 and a backrest cushioning 13 on the support structure 11 (Figs. 1-3; p. 4, lines 6-9; p. 6, lines 9-15). The tray table 3 is coupled to the support structure 11 and is foldable between a stored position on a back of the support structure 11 and a use position away from the back of the support structure 11 (Figs. 1-3, p. 5, lines 12-16). The pocket receptacle 15 is on the back of the support structure 11 for holding utensils, printed materials and travel accessories, and is a cavity overlapping at least partially the tray table 3 in its stored position in a direction perpendicular to the front surface 1a of the backrest 1 (Figs. 1-3; p. 5, lines 6-15). A main opening is provided for the pocket receptacle 15 for introducing objects into the cavity and is open and exposed when the

tray table 3 is in its stored position (Figs. 1-3; p. 6, lines 9-15). The tray table 3 remains outside the cavity in its stored position (Figs. 1-3, p. 5, lines 1-15).

Independent claim 22 covers an aircraft passenger seat comprising a seat part 2 having a forward edge 2a and a rear edge, and a backrest 1 extending from the seat part 2 adjacent its rear edge, with the backrest having a front surface 1a facing the seat part 2 and a rear surface remote from and facing opposite from the front surface 1a (Figs. 1-3; p. 4, line 12 – p. 5, line 10; p. 6, lines 9-15). A support structure 11 on the rear surface defines a cavity on the rear surface and has laterally spaced side portions (Figs. 1-3; p. 5, lines 6-15). A plate 23 extends between the side portions and is spaced from the backrest rear surface to define a receptacle 15 (Figs. 1-3; p. 5, lines 12-15). The plate 23 has a top edge defining a main opening for inserting items into and retrieving items from the receptacle 15, and has a bottom edge spaced from the top edge (Figs. 1-3; p. 6, lines 6-9). A structure element 21 extends between the support structure side portion 21, is spaced from the top edge, is adjacent the bottom edge, and forms a bottom of the receptacle 15 (Figs. 1-3; p. 5, lines 10-15). A tray table 3 is mounted on the rear surface for movement between a stored position overlying a rear, outer surface of the plate 23 and a use position spaced from the backrest (Figs. 1-3; p. 5, lines 12-16; p. 6, lines 9-15). The tray table 3 has an upper edge 4 in its stored position located below the top edge of the plate 23 maintaining the main opening unobstructed in its stored position, and in the stored position overlaps the receptacle at least partially in a direction perpendicular to the backrest front surface (Figs. 1-3; p. 5, lines 12 – p. 6, line 15).

Independent claim 37 covers an aircraft passenger seat comprising a seat part 2 and a backrest 1 extending from the seat part 2 and having a support structure 11 and backrest cushioning 13 bearing on the support structure 11 (Figs. 1-3; p. 4, lines 6-9; p. 6, lines 9-15).

The backrest 1 includes a backrest supporting face 1a for supporting a user's back and has at least an upright position in which the backrest has a main direction oriented in a vertical direction (Figs. 1-3; p. 6, lines 9-15). A tray table 3 is coupled to the support structure 11 and foldable between a stored position on a back of the support structure 11 and a use position away from the back of said support structure 11 (Figs. 1-3; p. 5, lines 12-16). A pocket receptacle 15 is on the back of the support structure 11 for holding utensils, printed materials and travel accessories, is a cavity overlapping at least partially the tray table in the stored position in a direction perpendicular to the backrest supporting face 1a and has a main opening for introducing objects into the cavity (Figs. 1-3; p. 5, lines 6-15; p. 6, lines 9-15). The main opening is open and exposed when the tray table 3 is in the stored position (Figs. 1-3; p. 6, lines 9-15). The tray table 3 remains outside the cavity in the stored position (Figs. 1-3; p. 6, lines 9-15). A wall piece 23 is spaced in a direction perpendicular to the backrest supporting face 1a from a rear wall of the support structure 11 to form a hollow space forming the cavity. The wall piece 23 and the rear wall are distinct from the tray table 3. The tray table 3 in the stored position has, relative to the vertical direction, a top edge 4 below a top edge of the wall piece. The tray table in the stored position abuts on the wall piece 23. The main opening of the cavity is formed by the top edge of the wall piece 23 (Figs. 1-3; p. 6, lines 9-15). A latch 7 fixes the tray table 3 in the stored position, and is, relative to the vertical direction, mounted below the main opening (Figs. 1-3; p. 6, lines 9-15).

By forming the aircraft passenger seat in the manner of each independent claim, a passenger has permanent and constant access to the cavity vertically overlapping the stored tray table in a direction perpendicular to the backrest front surface in a space saving manner. Access to the contents of the pocket receptacle can be obtained through the main opening even when the

tray table is in its up or stored position. The tray table does not interfere with the cavity. None of the cited patents or applications discloses or renders obvious these features, particularly in combination.

6. Grounds for Rejection to be Reviewed on Appeal

Claim 9 stands rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,092,705 to Merritt.

Claim 9 stands rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,375,907 to Rogers.

Claims 9-12 and 14-41 stand rejected under 35 U.S.C. §103 as being unpatentable over U.S. Patent No. 6,450,571 to Canni in view of U.S. Patent No. 3,615,118 to Buxton.

Claim 13 stands rejected under 35 U.S.C. §103 as being unpatentable over the Canni and Buxton patents in view of U.S. Patent No. 5,507,556 to Dixon.

7. Argument

A. Rejection of Claim 9 by Merritt Patent

(1) The Rejection

Claim 9 stands rejected under 35 U.S.C. §102 as being anticipated by U.S. Patent No. 6,092,705 to Meritt. The Meritt passenger seat allegedly satisfies all the limitations of claim 9, even though only the passenger seat in Fig. 5 with a support structure 1 and a tray table allegedly provided by the inside of the cover 8 are specified.

(2) Merritt Patent Does Not Anticipate the Subject Matter of Claim 9

Feature 8 of the Meritt patent is the front cover of case 1, which case is for a video monitor/player and is not a “tray table” as recited in claim 9. This front cover is not a table and is not shown to be capable of functioning as a table, particularly since the mesh side panel limits cover 8 to an angular position and prevents cover 8 from being in a horizontal position. Moreover, it is not shown to be pivotable between use and storage positions. Further, the case 1 does not form the support structure of the seat, but is merely an attachment releasably coupled to the seat.

More specifically, the Meritt patent discloses a mounting system to facilitate the use of an electronic signal generating device and a display device in an automobile (col. 2, lines 39-42). The mounting system is designed to be releasably attached at the back side of seats of the automobile (col. 4, lines 53-57). It comprises a principle case 1 serving as a carrying case and mounting platform for all electronic components 3 (col. 3, lines 8-9). The electronic signal generating device 3 is positioned upright in a lower portion of the principle case 1, attached to an inside of a front cover 8 of the principle case (col. 6, lines 14-15 and col. 3, lines 21-22).

The inside of the front cover 8 is alleged to provide the tray table of claim 9. The Meritt patent discloses on col. 3, lines 21-26 that the front cover 8 is coupled to the principle case 1 by zippers, and that unzipping the zippers allows the front cover 8 to extend forward approximately 15 degrees to expose a front control panel of the electronic signal generating device 3. From this description the inside of the front cover 8 clearly does not serve as a tray table, but is provided to hold the electronic signal generating device 3 in place (col. 3, lines 31-34). In fact, nowhere in the Meritt patent is the inside of the front cover shown or described to be capable of functioning as a table. Therefore, the patent to Meritt lacks to disclose the feature of a tray table.

Moreover, the alleged Meritt tray table is coupled to the principle case 1 which is mounted to the head rest of a seat of a vehicle (col. 3, lines 47-48) merely as an attachment, and is releasably coupled to the seat. Therefore, the alleged Meritt tray table is not coupled to a support structure of a backrest of a seat, as in claim 9.

The bottom portion of the Meritt principle case 1 is cited to anticipate the claim 9 feature of a pocket receptacle for holding utensils, printed material and travel accessories. Figs. 5 and 7 of the Meritt patent show that the bottom part of the principle case cannot take up any utensils, printed material or travel accessories with the electronic signal generating device 3 in the shown position. Thus, the Meritt patent also lacks to disclose the claim feature of a pocket receptacle.

Further, with no tray table taught in the Meritt patent, that patent cannot disclose or render obvious a tray table disclosed that, in a stored position, is at least partially overlapped by a pocket receptacle, as recited in claim 9.

Accordingly, the Meritt patent does not anticipate or render obvious the subject matter of claim 9.

To support an anticipation rejection, all elements of the claim must be found in a single reference. In re Royka et al., 490 F.2d 981, 984, 180 USPQ 580, 582 (CCPA 1974). Rejections under 35 U.S.C. § 102 are proper only when the claimed subject matter is identically disclosed or described in the prior art. In re Marshall, 578 F.2d 301, 304, 198 USPQ 344, 346 (CCPA 1978). Since all elements of claim 9 are not identically disclosed or described in the Merritt patent, the rejection under 35 U.S.C. § 102 is untenable.

B. Rejection of Claim 9 by Rogers Patent

(1) The Rejection

Claim 9 also stands rejected under 35 U.S.C. §102 as being anticipated by U.S. Patent No. 5,375,907 to Rogers. The Rogers patent is cited as having a seat part 21, a backrest 22 and a tray table 30 with the inside portion of feature 34 forming a pocket (see Fig. 2).

(2) Rogers Patent Does Not Anticipate the Subject Matter of Claim 9

Claim 9 is also not anticipated or rendered obvious by the Rogers patent. The Rogers table is mounted on the front of the seat back support structure, not the back of the seat back support structure as required in claim 9. Moreover, the Rogers lid 34 does not constitute a pocket receptacle, and particularly is not open but is in fact closed when the table 30 is in its stored position.

The Rogers sofa 20 has a seat surface 21, a back surface 22 and a recessed area 23 limited by side panels 24, 24a. Mechanisms 40 attach a sofa table 30 to side panels 24, 24a. The sofa table moves forwardly from the stored position shown in Fig. 5 to the use position overlying seat surface 21 shown in Fig. 4 by the mechanisms 40. Table 30 has an upholstered surface 36 and an opposite support surface 31 with a recessed compartment 32 and a storage compartment 33. The storage compartment has a container portion 29 and a lid 34.

As shown in Fig. 5, Rogers table 30 is on the front of the back rest support structure, not its back as recited in claim 9. Similarly, Rogers recessed portion 32 and storage compartment 33 are in sofa table 30, and are not on the back of the backrest support structure as recited in claim 9. Both the recessed portion and the storage compartment are completely closed in the stored position (Fig. 5) of the sofa table in the Rogers patent, contrary to the requirements of claim 9 of

the main opening being open for access to the receptacle cavity when the tray table is in a stored position.

Thus, the Rogers patent does not anticipate or render obvious the subject matter of claim 9.

To support an anticipation rejection, all elements of the claim must be found in a single reference. In re Royka et al., 490 F.2d 981, 984, 180 USPQ 580, 582 (CCPA 1974). Rejections under 35 U.S.C. § 102 are proper only when the claimed subject matter is identically disclosed or described in the prior art. In re Marshall, 578 F.2d 301, 304, 198 USPQ 344, 346 (CCPA 1978). Since all elements of claim 9 are not identically disclosed or described in the Rogers patent, the rejection under 35 U.S.C. § 102 is untenable.

C. Rejection of Claims 9-12 and 14-41 over Canni Patent in view of Buxton Patent

Relative to the rejection over the Canni patent in view of the Buxton patent, the combination of the Canni patent and the Buxton patent does not teach the specifically claimed positional relationship of the tray table and the pocket of the independent claims, particularly with many of the details of the dependent claims.

(1) The Rejection

Claims 9-12 and 14-41 stand rejected under 35 U.S.C. §103 as being unpatentable over U.S. Patent No. 6,450,571 to Canni in view of U.S. Patent No. 3,615,118 to Buxton. The Canni patent is cited for a passenger seat 10 having a pocket receptacle in backrest cushioning 42, which receptacle can receive holding utensils, etc. The Canni patent is also alleged to have the features of claims 10-12, 15, 18, 20, 29, 31, 33-35, 37 and 39-41, even though it does not have any tray table disclosed therein. The Canni patent is cited for a seat having a tray table pivotable

and latchable against the back of the seat. In support of the rejection, it is alleged that it would be obvious to provide the Buxton tray table on the Canni seat to result in the claimed invention.

(2) Subject Matter of Claim 9 is Patentably Distinguishable

The Canni patent discloses a motor vehicle seat 10 with a seat part and a backrest 12 in which a case 14 is received for storing objects therein. In one embodiment (Figs. 1-3), the case 14 is received in a rigid pocket 16 that, in turn, is received within a recess 18 formed in the backrest 12 (col. 2, lines 4-9). In another embodiment, the rigid pocket 16 is secured to a rear facing surface 44 of a seat back shell 40 (Fig. 4).

The support structure of the Canni backrest 12 is not disclosed, particularly in the cross-sectional views of Figs. 3 and 4. The only indication of a support structure of the backrest 12 is a pair of brackets with no reference numerals that connect the backrest 12 to the seat part, as shown in Figs. 1 and 2. These brackets do not continue upward within the backrest, as the Canni patent teaches that the seat back shell 30 and the foam bun 32 form the major structural components of the seat back 12 (col. 2, lines 18-19). Thus, the Canni patent fails to disclose all the features that are related to a backrest support structure in claim 9.

As correctly stated in the Office Action, the Canni patent fails to disclose a tray table coupled to a support structure of the backrest. Consequently, it further fails to disclose all other features related to the tray table, particularly its position relative to the receptacle cavity.

Moreover, the Canni patent does not disclose a pocket receptacle for holding utensils, printed material and travel accessories as required in claim 9. The rigid pocket 16 of the Canni patent is designed to receive similarly sized interchangeable specialized function storage cases 14 (col. 1, lines 42-43). In other words, the rigid pocket 16 is designed to receive a container, and the container can hold utensils, printed material and travel accessories. The reason is obviously

that utensils, printed material and travel accessories that were put into the rigid pocket directly, i.e., without the container, could not or only in a very cumbersome way be retrieved by hand, as the rigid pocket 16 is too narrow for doing so. The reason for the narrowness of the rigid pocket 16, as given in the Canni patent, is that the rigid pocket 16 must be sufficiently rigid to permit the seat to be used without affecting seat performance, whether the case is in the rigid pocket 16 or is removed from the rigid pocket 16 (col. 2, lines 24-27). If the rigid pocket was wider to allow a passenger's hand to get into the pocket, it would mean a downside of the design as the stability requirements for the backrest must be met, especially as the backrest does not comprise a support structure as required by claim 9 to increase the backrest stiffness as discussed above.

The Buxton patent is cited for disclosing a seat that has a tray table 72 that is coupled to a support structure 53 and is pivotable between a stored position and a used position, and is latchable against the back of the seat.

Neither the Canni patent nor the Buxton patent disclose a pocket receptacle on the back of the support structure for holding utensils, printed materials and travel accessories, that at least partially overlaps the tray table in a direction perpendicular to a front surface of the backrest. The Buxton patent only discloses a storage compartment, defined by liner 57, in the head rest of the seat and completely above its flap table 24. Therefore, it would not have been obvious to one of ordinary skill in the art at the time of invention to combine the Canni seat and the Buxton tray table to provide a seat comprising a pocket receptacle on the back of the support structure for holding utensils, printed materials and travel accessories, that at least partially overlaps the tray table in a direction perpendicular to a front surface of the backrest, as recited in claim 9. When neither applied patent discloses the claimed feature, the combination of those patents cannot render that feature obvious. In re Civitello, 339 F.2d 243, 144 USPQ 10 (C.C.P.A. 1964). As

stated in W. L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1551, 220 USPQ 303, 311 (Fed. Cir. 1983), there must be something in the teachings of the cited patents to suggest or provide a reason to one skilled in the art that the claimed invention would be obvious. Here, there is no adequate teaching or reason in the Canni or Buxton patent of this claimed limitation.

The invention of this application overcomes the drawback of the narrow pocket receptacle of the Canni patent that only allows storing utensils, etc. in a case or container and does not provide a high level of comfort to a passenger when all utensils have to be retrieved from the receptacle even if only a single item is desired. With regard to passenger comfort, the receptacle of the Canni patent does not provide an advantage over the well-known solution of storing a case underneath a seat in front. In the invention of the application, the utensils, etc. are readily available if so desired by a passenger.

At least for these reasons, the rejection of claim 9 over the Danni and Buxton patents is untenable.

(3) Claims Dependent on Claim 9

Claims 10-21, 27-36 and 39 being dependent upon claim 9, are also allowable for the above reasons. Moreover, these dependent claims recite additional features further distinguishing them over the cited patents and applications.

(a) Claim 10

Claim 10 is further distinguishable by the cavity extending vertically from an area adjacent the support structure top edge to a structure element forming the receptacle bottom and located within a surface area of the tray table in the stored position. No such structural arrangement is disclosed or rendered obvious by the Buxton patent since locker 72 is spaced

above table 63 in the table's stored position. Moreover, at the time of invention a combination of the Canni and Buxton patents would not have led one with ordinary skill in the art to conceive of the specific positional relationship of the tray table, the pocket receptacle and the support structure, in which the pocket receptacle extends from an area adjacent a top edge of the support structure to a structure element forming a bottom of the pocket receptacle and is located within a surface area of the tray table in the stored position, wherein the top edge of the support structure and the bottom of the receptacle are defined relative to the vertical direction, as recited in claim 10.

(b) Claim 11

Claim 11 is further distinguishable by the main opening being adjacent the top edge of the support structure and opening in a backward direction away from the backrest cushioning. This further maintains the access to the pocket receptacle in the stored position of the tray table. Such structure with the claimed overlapping is not disclosed or rendered obvious by the Buxton patent.

(c) Claim 12

Claim 12 is further distinguishable by the plate forming the rear wall of the receptacle and being distinct from the tray table, particularly within the claimed overlapping orientation. At the time of invention, one with ordinary skill in the art would not have been led to conceive of a plate that extends between two side edges of the support structure and, relative to the vertical direction, above the structure element, and that forms a rear wall of the pocket receptacle, with the plate being distinct from the tray table, as recited in claim 12, by a combination of the Canni and Buxton patents.

(d) Claim 13

Claim 13 is further distinguishable by the display screen integrated therein, within the overall claimed combination. One with ordinary skill in the art, at the time of invention, would not have considered placing a monitor at the back of the seat of the Canni patent, modified by the tray table of the patent to Buxton, in view of U.S. Patent No. 5,507,556 to Dixon. In the Dixon patent, the monitor 20 is mounted by a mounting plate 21 arranged within a recess 22 in the seat back 14. Such recess would cause a substantial weakening of the seat rigidity that jeopardizes the use of the seat without an affected seat performance (see col. 2, lines 24-27 of the Canni patent), thereby teaching away from the claimed combination.

(e) Claim 14

Claim 14 is further distinguishable by the latch for the tray table being supported in the stored and use positions on the plate defining the receptacle. While the Buxton patent discloses a turn button, such turn button is on the back surface of the backrest, and not on a plate forming the back of locker 63 relied upon for the claimed cavity. A combination of the Canni and Buxton patents would also not have led one with ordinary skill in the art, at the time of invention, to conceive of the plate of claim 12 to support a latch for fixing the tray table in the stored position, as recited by claim 14.

(f) Claim 15

Claim 15 is further distinguishable by the bottom opening extending between the structure element and the plate. No such bottom opening is provided in the Canni or Buxton seat.

(g) Claim 16

Claim 16 is further distinguishable by a lip on the support element and projecting into the bottom opening. No such lip is disclosed in the Canni or Buxton patent.

(h) Claim 17

Claim 17 is further distinguishable by the tray table having its face facing the cavity in the stored position, while the main opening allows removal of items stored in that position. The Buxton table 72 is spaced below locker 63 relied upon for the cavity and does not face it, as claimed. The Canni patent has no tray table.

(i) Claim 18

Claim 18 is further distinguishable by the relative positioning of wall piece 23 relative to the rear wall of the support structure bearing the backrest cushioning, with the tray table having a top edge below a top of the wall piece. These relative orientations ensure unobstructed access to the receptacle contents through the main opening even when the tray table is in its stored position. Such arrangement is not disclosed or rendered obvious by the Buxton patent since the locker 63 is completely above table 72 in the stored position. For one of ordinary skill in the art who at the time of the invention considered to modify the Canni seat with a tray table assembly according to the Buxton patent, and to reach at the feature of the invention as recited in claim 18, wherein a wall piece is spaced in a direction perpendicular to a backrest supporting face from a rear wall of the support structure to form a hollow space forming the cavity, and wherein the plate and the rear wall are distinct from the tray table and the tray table abuts on the wall piece in the stored position, would have found a mechanical weakening of the stiffness of the Canni rigid pocket 16, and that the rigid pocket 16 might not be sufficiently rigid any longer, as required by

the Canni patent teaching (col. 2, lines 24-27). Therefore, the one with ordinary skill in the art would not have pursued the proposed combination of the Canni and Buxton patents to provide the subject matter of claim 18.

(j) Claim 19

Claim 19 is further distinguishable by the latch being on the rear side of the wall piece. The Buxton patent does not have such wall piece for its turn button 74, and thus, cannot teach such structure for adding to the Canni seat.

(k) Claim 20

Claim 20 is further distinguishable by the latch being mounted below the main opening in a direction parallel to the main direction of the seat back in its upright position, within the claimed combination of the overlapping orientation of the cavity and table.

(l) Claim 21

Claim 21 is further distinguishable by the upper edge of the wall piece defining the main opening and the latch for the tray table being mounted below that upper edge. Such positioning of the latch ensures that the tray table will not obscure the main opening for access to the pocket receptacle contents when the tray table is in its stored position. The Buxton latch is not mounted on such wall piece, and thus, cannot provide teaching that structure for the Canni seat.

(m) Claim 27

Claim 27 is further distinguishable by the tray table being distinct from the support structure in combination with the claimed overlapping.

(n) Claim 28

Claim 28 is further distinguishable by the plate being fixedly connected to the support structure in combination with the claimed overlapping.

(o) Claim 29

Claim 29 is further distinguishable by the opening being in the upper half of the backrest in combination with the claimed overlapping.

(p) Claim 30

Claim 30 is further distinguishable by the vertical top opening of the cavity. The Canni cavity is not on the seat with a tray. The Buxton locker 63 only opens to its back side, not its vertical top.

(q) Claim 31

Claim 31 is further distinguishable by the vertical top opening of the cavity. The Canni cavity is not on the seat with a tray. The Buxton locker 63 only opens to its back side, not its vertical top.

(r) Claim 32

Claim 32 is further distinguishable by the utensils in combination with the claimed overlapping.

(s) Claim 33

Claim 33 is further distinguishable by the stored tray table at least partially covering the receptacle in a direction perpendicular to the backrest supporting face. The Buxton table 74 does not cover locker 63 since they are completely vertically spaced, and thus, cannot teach adding such feature to the Canni seat.

(t) Claim 34

Claim 34 is further distinguishable by the cavity wall parts distinct from the table in combination with the claimed overlapping.

(u) Claim 35

Claim 35 is further distinguishable by the main opening defined by the top edge of the wall piece forming the cavity between the wall piece and the backrest supporting face and the main opening above the top edge of the stored tray table, particularly in combination with claimed overlapping. The Buxton opening of locker 63 is not at the top edge of such wall piece, and thus, cannot teach such structure for the Canni seat.

(v) Claim 36

Claim 36 is further distinguishable by the latch being extended over the top edge of the tray table, with the overall claimed combination.

(w) Claim 39

Claim 39 is further distinguishable by the cavity or receptacle being horizontally between the stored tray table and the backrest and the overlapping vertical extents. Those features are not disclosed or rendered obvious by the Canni and Buxton patents.

(4) Subject Matter of Claim 22 is Patentably Distinguishable

The Canni patent discloses a motor vehicle seat 10 with a seat part and a backrest 12 in which a case 14 is received for storing objects therein. In one embodiment (Figs. 1-3), the case 14 is received in a rigid pocket 16 that, in turn, is received within a recess 18 formed in the backrest 12 (col. 2, lines 4-9). In another embodiment, the rigid pocket 16 is secured to a rear facing surface 44 of a seat back shell 40 (Fig. 4).

The support structure of the Canni backrest 12 is not disclosed, particularly in the cross-sectional views of Figs. 3 and 4. The only indication of a support structure of the backrest 12 is a pair of brackets with no reference numerals that connect the backrest 12 to the seat part, as shown in Figs. 1 and 2. These brackets do not continue upward within the backrest, as the Canni patent teaches that the seat back shell 30 and the foam bun 32 form the major structural components of the seat back 12 (col. 2, lines 18-19). Thus, the Canni patent fails to disclose all the features that are related to a backrest support structure and to the plate and the structure element extending between the support structure side portions to provide a receptacle in claim 22.

As correctly stated in the Office Action, the Canni patent fails to disclose a tray table coupled to a support structure of the backrest. Consequently, it further fails to disclose all other features related to the tray table that are required by claim 22, particularly relative to the plate.

Moreover, the Canni patent does not disclose a pocket receptacle defined by a plate and structure element for holding utensils, printed material and travel accessories as required in claim 22 of the application. The rigid pocket 16 of the Canni patent is designed to receive similarly sized interchangeable specialized function storage cases 14 (col. 1, lines 42-43). In other words, the rigid pocket 16 is designed to receive a container, and the container can hold utensils, printed material and travel accessories. The reason is obviously that utensils, printed material and travel accessories that were put into the rigid pocket directly, i.e., without the container, could not or only in a very cumbersome way be retrieved by hand, as the rigid pocket 16 is too narrow for doing so. The reason for the narrowness of the rigid pocket 16, as given in the Canni patent, is that the rigid pocket 16 must be sufficiently rigid to permit the seat to be used without affecting seat performance, whether the case is in the rigid pocket 16 or is removed from the rigid pocket

16 (col. 2, lines 24-27). If the rigid pocket was wider to allow a passenger's hand to get into the pocket, it would mean a downside of the design as the stability requirements for the backrest must be met, especially as the backrest does not comprise a support structure as required by claim 22 to increase the backrest stiffness as discussed above.

The Buxton patent is cited for disclosing a seat that has a tray table 72 that is coupled to a support structure 53 and is pivotable between a stored position and a used position, and is latchable against the back of the seat.

Neither the Canni patent nor the Buxton patent disclose a receptacle defined by a plate on the back of the support structure for holding utensils, printed materials and travel accessories, that at least partially overlaps the tray table in a direction perpendicular to a front surface of the backrest. The Buxton patent only discloses a storage compartment, defined by liner 57, in the head rest of the seat and completely above its flap table 24. Therefore, it would not have been obvious to one of ordinary skill in the art at the time of invention to combine the Canni seat and the Buxton tray table to provide a seat comprising a plate defining receptacle on the back of the support structure for holding utensils, printed materials and travel accessories, that at least partially overlaps the tray table in a direction perpendicular to a front surface of the backrest, as recited in claim 22. When neither applied patent discloses the claimed feature, the combination of those patents cannot render that feature obvious. In re Civitello, 339 F.2d 243, 144 USPQ 10 (C.C.P.A. 1964). As stated in W. L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1551, 220 USPQ 303, 311 (Fed. Cir. 1983), there must be something in the teachings of the cited patents to suggest or provide a reason to one skilled in the art that the claimed invention would be obvious. Here, there is no adequate teaching or reason in the Canni or Buxton patent of this claimed limitation.

The invention of this application overcomes the drawback of the narrow pocket receptacle of the Canni patent that only allows storing utensils, etc. in a case or container and does not provide a high level of comfort to a passenger when all utensils have to be retrieved from the receptacle even if only a single item is desired. With regard to passenger comfort, the receptacle of the Canni patent does not provide an advantage over the well-known solution of storing a case underneath a seat in front. In the invention of the application, the utensils, etc. are readily available if so desired by a passenger.

At least for these reasons, the rejection of claim 22 over the Canni and Buxton patents is untenable.

(5) Claims Depend on Claim 22

Claims 23-26 and 40, being dependent upon claim 22, are also allowable for the above reasons. Moreover, these dependent claims recite additional features further distinguishing them over the cited patent documents.

(a) Claim 23

Claim 23 is further distinguishable by the latch for securing the tray table being mounted on the plate between its top and bottom edges. No such plate with a latch is provided in the Buxton patent, and thus, cannot provide a teaching of that feature for the Canni seat.

(b) Claim 24

Claim 24 is further distinguishable by the latch being adjacent the plate top edge. No such latch or relationship is disclosed or rendered obvious by the Canni and Buxton patents.

(c) Claim 25

Claim 25 is further distinguishable by the tray table being pivotally coupled to the support structure in combination with the plate that defines the receptacle overlapping the stored tray table.

(d) Claim 26

Claim 26 is further distinguishable by the plate having a bottom opening adjacent its bottom edge. No such bottom opening is provided in the Canni and Buxton patents.

(e) Claim 40

Claim 40 is further distinguishable by the cavity or receptacle being horizontally between the stored tray table and the backrest and the overlapping vertical extents. Those features are not disclosed or rendered obvious by the Canni and Buxton patents.

(6) Claim 37 is Patentably Distinguishable

Claim 37 combines the limitations of claims 9, 18, 20 and 35, and is patentably distinguishable for the corresponding reasons.

Specifically, the Canni patent discloses a motor vehicle seat 10 with a seat part and a backrest 12 in which a case 14 is received for storing objects therein. In one embodiment (Figs. 1-3), the case 14 is received in a rigid pocket 16 that, in turn, is received within a recess 18 formed in the backrest 12 (col. 2, lines 4-9). In another embodiment, the rigid pocket 16 is secured to a rear facing surface 44 of a seat back shell 40 (Fig. 4).

The support structure of the Canni backrest 12 is not disclosed, particularly in the cross-sectional views of Figs. 3 and 4. The only indication of a support structure of the backrest 12 is a pair of brackets with no reference numerals that connect the backrest 12 to the seat part, as

shown in Figs. 1 and 2. These brackets do not continue upward within the backrest, as the Canni patent teaches that the seat back shell 30 and the foam bun 32 form the major structural components of the seat back 12 (col. 2, lines 18-19). Thus, the Canni patent fails to disclose all the features that are related to a backrest support structure in claim 37.

As correctly stated in the Office Action, the Canni patent fails to disclose a tray table coupled to a support structure of the backrest. Consequently, it further fails to disclose all other features related to the tray table, particularly its position relative to the receptacle cavity.

Moreover, the Canni patent does not disclose a pocket receptacle for holding utensils, printed material and travel accessories as required in claim 37. The rigid pocket 16 of the Canni patent is designed to receive similarly sized interchangeable specialized function storage cases 14 (col. 1, lines 42-43). In other words, the rigid pocket 16 is designed to receive a container, and the container can hold utensils, printed material and travel accessories. The reason is obviously that utensils, printed material and travel accessories that were put into the rigid pocket directly, i.e., without the container, could not or only in a very cumbersome way be retrieved by hand, as the rigid pocket 16 is too narrow for doing so. The reason for the narrowness of the rigid pocket 16, as given in the Canni patent, is that the rigid pocket 16 must be sufficiently rigid to permit the seat to be used without affecting seat performance, whether the case is in the rigid pocket 16 or is removed from the rigid pocket 16 (col. 2, lines 24-27). If the rigid pocket was wider to allow a passenger's hand to get into the pocket, it would mean a downside of the design as the stability requirements for the backrest must be met, especially as the backrest does not comprise a support structure as required by claim 37 to increase the backrest stiffness as discussed above.

The Buxton patent is cited for disclosing a seat that has a tray table 72 that is coupled to a support structure 53 and is pivotable between a stored position and a used position, and is latchable against the back of the seat.

Neither the Canni patent nor the Buxton patent disclose a pocket receptacle on the back of the support structure for holding utensils, printed materials and travel accessories, that at least partially overlaps the tray table in a direction perpendicular to a front surface of the backrest. The Buxton patent only discloses a storage compartment, defined by liner 57, in the head rest of the seat and completely above its flap table 24. Therefore, it would not have been obvious to one of ordinary skill in the art at the time of invention to combine the Canni seat and the Buxton tray table to provide a seat comprising a pocket receptacle on the back of the support structure for holding utensils, printed materials and travel accessories, that at least partially overlaps the tray table in a direction perpendicular to a front surface of the backrest, as recited in claim 37. When neither applied patent discloses the claimed feature, the combination of those patents cannot render that feature obvious. In re Civitello, 339 F.2d 243, 144 USPQ 10 (C.C.P.A. 1964). As stated in W. L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1551, 220 USPQ 303, 311 (Fed. Cir. 1983), there must be something in the teachings of the cited patents to suggest or provide a reason to one skilled in the art that the claimed invention would be obvious. Here, there is no adequate teaching or reason in the Canni or Buxton patent of this claimed limitation.

The invention of this application overcomes the drawback of the narrow pocket receptacle of the Canni patent that only allows storing utensils, etc. in a case or container and does not provide a high level of comfort to a passenger when all utensils have to be retrieved from the receptacle even if only a single item is desired. With regard to passenger comfort, the receptacle of the Canni patent does not provide an advantage over the well-known solution of

storing a case underneath a seat in front. In the invention of the application, the utensils, etc. are readily available if so desired by a passenger.

Claim 37 is further distinguishable by the relative positioning of wall piece 23 relative to the rear wall of the support structure bearing the backrest cushioning, with the tray table having a top edge below a top of the wall piece. These relative orientations ensure unobstructed access to the receptacle contents through the main opening even when the tray table is in its stored position. Such arrangement is not disclosed or rendered obvious by the Buxton patent since the locker 63 is completely above table 72 in the stored position. For one of ordinary skill in the art who at the time of the invention considered to modify the Canni seat with a tray table assembly according to the Buxton patent, and to reach at the feature of the invention as recited in claim 18, wherein a wall piece is spaced in a direction perpendicular to a backrest supporting face from a rear wall of the support structure to form a hollow space forming the cavity, and wherein the plate and the rear wall are distinct from the tray table and the tray table abuts on the wall piece in the stored position, would have found a mechanical weakening of the stiffness of the Canni rigid pocket 16, and that the rigid pocket 16 might not be sufficiently rigid any longer, as required by the Canni patent teaching (col. 2, lines 24-27). Therefore, the one with ordinary skill in the art would not have pursued the proposed combination of the Canni and Buxton patents to provide this subject matter of claim 37.

Claim 37 is further distinguishable by the latch being mounted below the main opening in a direction parallel to the main direction of the seat back in its upright position, within the claimed combination of the overlapping orientation of the cavity and table. Such latch positioning is not disclosed in the cited patents.

Claim 37 is further distinguishable by the main opening defined by the top edge of the wall piece forming the cavity between the wall piece and the backrest supporting face and the main opening above the top edge of the stored tray table, particularly in combination with claimed overlapping. The Buxton opening of locker 63 is not at the top edge of such wall piece, and thus, cannot teach such structure for the Canni seat.

Accordingly, the subject matter of claim 37 is not rendered obvious by the Canni and Buxton patents.

(7) Claims Dependent on Claim 37

(a) Claim 38

Claim 38, being dependent upon claim 37, is also allowable for those reasons, and is further distinguishable by the latch extending over the tray table top edge in the storage position that is not disclosed in the Canni and Buxton patents.

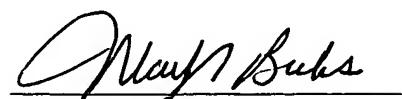
(b) Claim 41

Claim 41, being dependent upon claim 37, is also allowable for those reasons, and is further distinguishable by the cavity or receptacle being horizontally between the stored tray table and the backrest and the overlapping vertical extents. Those features are not disclosed or rendered obvious by the Canni and Buxton patents.

8. Conclusion

In view of the foregoing, Appellants-Applicants submit that the rejections under 35 U.S.C. §102 and §103 and are untenable, and request that these rejections be reversed.

Respectfully submitted,



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APPENDIX A – COPY OF CLAIMS ON APPEAL

9. An aircraft passenger seat, comprising:

a seat part;

a backrest extending from said seat part and having a front surface facing said seat part, a support structure and backrest cushioning bearing on said support structure;

a tray table coupled to said support structure and foldable between a stored position on a back of said support structure and a use position away from said back of said support structure; and

a pocket receptacle on said back of said support structure for holding utensils, printed materials and travel accessories, said receptacle being a cavity overlapping at least partially said tray table in the stored position in a direction perpendicular to said front surface of said backrest and having a main opening for introducing objects into said cavity, said main opening being open and exposed when said tray table is in the stored position, said tray table remaining outside said cavity in the stored position.

10. An aircraft passenger seat according to claim 9 wherein

said backrest is extendable in an upright position having a main direction oriented in a vertical direction;

said cavity extends from an area adjacent a top edge of said support structure to a structure element forming a bottom of said receptacle and located within a surface area of said tray table in the stored position; and

 said top edge of said support structure and said bottom of said receptacle are defined relative to said vertical direction.

11. An aircraft passenger seat according to claim 10 wherein

 said main opening is adjacent said top edge of said support structure and opens in a back direction away from said backrest cushioning.

12. An aircraft passenger seat according to claim 10 wherein

 a plate extends between two side edges of said support structure and in said vertical direction, above said structure element, and forms a rear wall of said receptacle, said plate being distinct from said tray table.

13. An aircraft passenger seat according to claim 10 wherein

 said top edge of said support structure receives a display screen integrated therein.

14. An aircraft passenger seat according to claim 12 wherein

 said plate supports a latch for fixing said tray table in the stored position, said latch being supported on said plate in the stored and use positions of said tray table.

15. An aircraft passenger seat according to claim 12 wherein

an elongated bottom opening extends between said structure element and said plate.

16. An aircraft passenger seat according to claim 15 wherein

said support element comprises a lip on an edge thereof bordering said bottom opening and projecting into an inside width of said bottom opening.

17. An aircraft passenger seat according to claim 9 wherein

said tray table comprises a face facing said cavity in the stored position; and

said main opening allows removal of items stored in said cavity in a direction parallel to said face in the stored position of said tray table.

18. An aircraft passenger seat according to claim 9 wherein

said backrest comprises a backrest supporting face for supporting a user's back;

said backrest has at least an upright position in which said backrest has a main direction oriented in a vertical direction;

a wall piece is spaced in a direction perpendicular to said backrest supporting face from a rear wall of said support structure bearing said backrest cushioning to form a hollow space forming said cavity, said wall piece and said rear wall being distinct from said tray table, said tray table abutting on said wall piece in the stored position; and

said tray table, in the stored position, has relative to the vertical direction a top edge below a top edge of said wall piece.

19. An aircraft passenger seat according to claim 18 wherein
a latch for fixing said tray table in the stored position is mounted on a rear side of said
wall piece.

20. An aircraft passenger seat according to claim 9 wherein
said backrest has at least an upright position in which said backrest has a main direction
oriented in a vertical direction; and
a latch for fixing said tray table in the stored position is, relative to the vertical direction,
mounted below said main opening.

21. An aircraft passenger seat according to claim 18 wherein
said upper edge of said wall piece defines said main opening; and
a latch for fixing said tray table in the stored position is mounted below said upper edge
of said wall piece.

22. An aircraft passenger seat, comprising:
a seat part;
a backrest extending from said seat part and having a front surface facing said seat part
and a rear surface remote from and facing oppositely from said front surface;
a support structure on said rear surface defining a cavity on said rear surface and having
laterally spaced side portions;

a plate extending between said side portions and spaced from said rear surface defining a receptacle, said plate having a top edge defining a main opening for inserting items into and retrieving items from said receptacle and having a bottom edge spaced from said top edge;

a structure element extending between said side portions spaced from said top edge, adjacent said bottom edge and forming a bottom of said receptacle; and

a tray table mounted on said rear surface for movement between a stored position overlying a rear, outer surface of said plate and a use position spaced from said backrest, said tray table having an upper edge in said stored position located below said top edge of said plate maintaining said main opening unobstructed in the stored position of said tray table, said tray table in the stored position overlapping said receptacle at least partially in a direction perpendicular to said front surface of said backrest.

23. An aircraft passenger seat according to claim 22 wherein

a latch for securing said tray table in the stored position is mounted on said plate between said top edge and said bottom edge.

24. An aircraft passenger seat according to claim 23 wherein

said latch is adjacent said top edge.

25. An aircraft passenger seat according to claim 22 wherein

said tray table is pivotally coupled to said support structure.

26. An aircraft passenger seat according to claim 22 wherein
said plate has a bottom opening adjacent said bottom edge.

27. An aircraft passenger seat according to claim 9 wherein
said tray table is distinct from said support structure.

28. An aircraft passenger seat according to claim 12 wherein
said plate is fixedly connected to said support structure.

29. An aircraft passenger seat according to claim 9 wherein
said backrest has at least an upright position in which said backrest has a main direction
oriented in a vertical direction;
said backrest has an upper half and a lower half relative to the vertical direction; and
said main opening is placed in said upper half.

30. An aircraft passenger seat according to claim 29 wherein
said main opening is placed at a top of the cavity relative to the vertical direction.

31. An aircraft passenger seat according to claim 9 wherein
said backrest has at least an upright position in which said backrest has a main direction
oriented in a vertical direction; and

relative to the vertical direction, said main opening is placed above a top edge of said tray table in the stored position.

32. An aircraft passenger seat according to claim 9 wherein

the utensils are maintained in the receptacle when said tray table is in the use position.

33. An aircraft passenger seat according to claim 9 wherein

said backrest comprises a backrest supporting face for supporting a user's back; and

said receptacle is, relative to a direction perpendicular to the backrest supporting face, at least partially covered by said tray table in the stored position.

34. An aircraft passenger seat according to claim 9 wherein

said cavity is formed by at least four wall parts that adjoin each other, are distinct from said tray table and face each other by pairs.

35. An aircraft passenger seat according to claim 18 wherein

said main opening of said cavity is formed by said top edge of said wall piece.

36. An aircraft passenger seat according to claim 19 wherein

said latch extends over said top edge of said tray table in the stored position.

37. An aircraft passenger seat, comprising:

a seat part;

a backrest extending from said seat part and having a support structure and backrest cushioning bearing on said support structure, said backrest including a backrest supporting face for supporting a user's back and having at least an upright position in which said backrest has a main direction oriented in a vertical direction;

a tray table coupled to said support structure and foldable between a stored position on a back of said support structure and a use position away from said back of said support structure;

a pocket receptacle on said back of said support structure for holding utensils, printed materials and travel accessories, said receptacle being a cavity overlapping at least partially said tray table in the stored position in a direction perpendicular to said backrest supporting face and having a main opening for introducing objects into said cavity, said main opening being open and exposed when said tray table is in the stored position, said tray table remaining outside said cavity in the stored position;

a wall piece spaced in a direction perpendicular to said backrest supporting face from a rear wall of said support structure to form a hollow space forming said cavity, said wall piece and said rear wall being distinct from the tray table, said tray table in the stored position having, relative to the vertical direction, a top edge below a top edge of said wall piece, said tray table in the stored position abutting on said wall piece, said main opening of said cavity being formed by said top edge of said wall piece; and

a latch fixing said tray table in the stored position, and being relative to the vertical direction, mounted below said main opening.

38. An aircraft passenger seat according to claim 37 wherein

said latch extends over said top edge of said tray table in the stored position.

39. An aircraft passenger seat according to claim 9 wherein

said cavity extends in said support structure horizontally between said tray table in the stored position and said backrest, and overlaps said tray table in the stored position in vertical extents thereof.

40. An aircraft passenger seat according to claim 22 wherein

said receptacle is horizontally between said plate and said rear surface of said backrest, and overlaps said tray table in the stored position in vertical extents thereof.

41. An aircraft passenger seat according to claim 37 wherein

said receptacle extends in said support structure horizontally between said tray table in the stored position and said backrest, and overlaps said tray table in the stored position in vertical extents thereof.

APPENDIX B - EVIDENCE

None

APPENDIX C – RELATED PROCEEDINGS

None